#### MONDAY, NOVEMBER 17, 1997

At 9:30 a.m., the court met in the Library & Courts Building to begin its regular appeals calendar.

PRESENT: SIMS, Acting Presiding Justice

RAYE, Associate Justice

MORRISON, Associate Justice

Bailiff Jones. Calendar called.

Civil CARLIN HOFMAN ET AL.

No. vs.

C025339 FIVE WAY FARMING ET AL.

Cause called. Mark G. Steidlmayer of Steidlmayer & Ithurburn argued for Defendants-Appellants. Kent N. Calfee, of Calfee & Young argued for Plaintiffs-Respondents. Cause submitted.

# MONDAY, NOVEMBER 17, 1997 CONTINUED

Civil BEVERLY JANE BLIXT

No. vs.

C026212 STOCKTON UNIFIED SCHOOL DISTRICT ET AL.

Cause called. Richard M. Rogers, of Mayo & Rogers argued for Plaintiff-Appellant. Amina R. Merritt, of Walsh & Declues argued for Defendants-Respondents. Cause submitted.

At 10:10 a.m., court recessed. At 10:14 a.m. court reconvened with the same panel except Associate Justice Callahan in place of Associate Justice Morrison.

Civil JEREMY CHRISTIAN ET AL.

No. vs.

C025614 TERMINIX INTERNATIONAL COMPANY

Cause called. Ian M. Green argued for Defendant-Appellant. Robert N. Campbell, of Campbell & Clark argued for Plaintiffs-Respondents. Cause submitted.

At 10:32 a.m., court recessed. At 10:33 a.m. court reconvened with Acting Presiding Justice Davis, Associate Justice Scotland and Associate Justice Nicholson.

Civil MARTIN SOUZA ET AL.

No. vs.

C022484 BURTON LAUPPE ET AL.

Cause called. D. Jack Haycock, of Haycock & Pomkala argued for Plaintiffs-Appellants. Richard Hyland Caulfield, of Caulfield, Davies & Donahue argued for Defendants-Respondents Lauppe et al. Stephen Mackey argued for Defendant-Respondent System Integrators, Inc. Mark Arruti, of Lea & Arruti argued for Defendants-Respondents Demeter Corp. et al. Cause submitted.

## MONDAY, NOVEMBER 17, 1997 CONTINUED

At 11:03 a.m., court recessed. At 2:04 p.m. court reconvened with Acting Presiding Justice Davis, Associate Justice Raye and Associate Justice Morrison.

Civil JAMES M. DESPAIN ET AL.

No. vs.

C024686 TODD L. RATLEY ET AL.

Cause called. Robert N. Campbell, of Campbell & Clark argued for Defendants-Respondents. No appearance was made on behalf of Plaintiff-Appellant Pamela DeSpain in pro per. No appearance was made on behalf of Plaintiff-Appellant James M. DeSpain in pro per. Cause submitted.

Court recessed at 2:24 p.m. until 9:30 a.m., Tuesday, November 18, 1997.

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Civil GEORGE JOE AZCARATE

No. vs.

C025643 PATRICIA DELIA AZCARATE

By the Court:

Appellant's petition for rehearing is denied.

Dated: November 17, 1997

PUGLIA, P.J.

Civil DARRYL HOWARD HARVEY

No. vs.

C024274 DONNA LUNARDINI

By the Court:

Appellant's petition for rehearing is denied.

Dated: November 17, 1997

SIMS, Acting P.J.

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: PUGLIA, Presiding Justice

RAYE, Associate Justice

MORRISON, Associate Justice

Bailiff Jones. Calendar called.

Civil COUNTY OF BUTTE

No. vs.

C024160 GREGORY R. FINLEY

Cause called. Gregory R. Finley argued for himself as Defendant-Appellant in pro per. Carol Ann White, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Civil MALCOLM LEISER

No. vs.

C025194 CLAIRELEE BULKLEY ET AL.

Cause called. G. Malcolm Leiser argued for himself as Plaintiff-Appellant in pro per. Peter J. Pullen, of Moore, Meegan, Hanschu & Kassenbrock argued for Defendants-Respondents. Cause submitted.

At 9:55 a.m., court recessed. At 9:58 a.m. court reconvened with Presiding Justice Puglia, Associate Justice Sims and Associate Justice Scotland.

Civil CITY OF REDDING

No. vs.

C021102 MOBIL OIL COMPANY ET AL.

Cause called. Christopher C. Rulon, of Kurth, Ylitalo & Cowden argued for Plaintiff-Appellant. Edward L. Kurth appeared on behalf of Plaintiff-Appellant but did not argue. Kevin A. Mills, of Fabris, Burgess & Ring argued for Defendant-Respondent Shell. Eric R. Haas, of Larson & Burnham argued for Defendant-Respondent Ford. Henry A. Wirta, Jr., of Harrington, Foxx, Dubrow & Canter argued for Defendant-Respondent Familian. Thomas H. Nienow, of Wright, Robinson, Osthimer & Tatum argued for Defendant-Respondent Witco. Vincent W. Marsella appeared on behalf of Defendant-Respondent Witco but did not argue. Patrick S. Schoenburg appeared for Defendant-Respondent Mobil. Joseph Ehrlich appeared on behalf of Defendant-Respondent Wesflex. James W. Pinson appeared on behalf of Defendant-Respondent Walsh. Candace L. Matson appeared on behalf of Defendant-Respondent Orangeburg. Daniel R. Kirwan appeared on behalf of Defendant-Respondent Muellar. Scott R. Mosko appeared on behalf of Defendant-Respondents Jones. David S. Henningsen appeared on behalf of Defendant-Respondent McDonald. Kristen L. Comer appeared on behalf of Defendant-Respondent Dan-De. No appearance was made on behalf of Defendant-Respondent Westburne and American Brass. Cause submitted.

At 10:36 a.m., court recessed. At 10:43 a.m. court reconvened with the same panel except Associate Justice Nicholson in place of Associate Justice Scotland.

Civil SANTA MARGARITA WATER DISTRICT ET AL.

No. vs.

C024295 STATE CONTROLLER ET AL.

Cause called. Susan R. Oie, Deputy Attorney General argued for Defendants-Respondents. James A. Curtis, of Shine, Compton & Nelder-Adams. Cause submitted.

At 11:12 a.m., court recessed. At 2:00 p.m. court reconvened with the same panel except Associate Justice Raye in place of Associate Justice Puglia.

Crim. THE PEOPLE

No. vs.

CO24461 GARY KLOCKMAN

Cause called. Francine R. Tone, court appointed counsel argued for Defendant-Appellant. Julie A. Hokans, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Court recessed at 2:13 p.m. until 9:30 a.m., Wednesday, November 19,

1997.

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Crim. FORTY-NINER TRUCK PLAZA, INC. ET AL.

No. vs.

C021946 UNION OIL COMPANY OF CALIFORNIA ET AL.

By the Court:

Appellant/cross-respondent's petition for rehearing is denied.

Dated: November 18, 1997

SIMS, Acting P.J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023187 VINCENT TALANCON

The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.

SCOTLAND, J.

Civil CONSERVATORSHIP OF THE PERSON ELMER MILBRANDT

No. DALE HASS ET AL. (Not for Publication)

C024745 vs.

RALPH PERRY

Cause called. The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.

SCOTLAND, J.

Civil EDWARD FREIDBERG ET AL.

No. vs. (Not for Publication)

C025431 STANLEY P. FLESHMAN ET AL.

The order denying Fleshman's and Garbutt's petitions to compel arbitration is reversed. The matter is remanded to the trial court. The trial court is directed to enter an order that submits the distribution controversy to binding private arbitration and that says the interpleader action (and its cross-action until such binding arbitration has been concluded. The trial court may also include in this order any other appropriate items related to the arbitration or the interpleader action. Fleshman and Garbutt are awarded their costs on appeal.

DAVIS, J.

We concur: PUGLIA, P.J.

CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024091 BRYAN JAMES TREND

The judgment of conviction is affirmed. The sentence is vacated and the matter is remanded to the trial court for the purpose of allowing the court to consider whether to strike defendant's prior serious felony conviction. If the trial court strikes the prior, it shall resentence defendant. If the trial court declines to strike the prior, it shall reinstate the sentence previously imposed.

DAVIS, J.

We concur: SIMS, Acting P.J.

SCOTLAND, J.

Civil ERNESTINE WILSON (Not for Publication)

No. vs.

C026092 STATE DEPARTMENT OF REHABILITATION

The judgment is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.

MORRISON, J.

Civil THE PEOPLE (Not for Publication)

No. vs.

C025018 MARIO MOLINA GONZALEZ

The judgment is affirmed.

RAYE, J.

We concur: DAVIS, Acting P.J.

MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025414 DARICK RAY PORTER

The convictions for unlawful sexual intercourse are affirmed. In all

other respects the judgment is reversed.

NICHOLSON, J.

We concur: PUGLIA, P.J.

RAYE, J.

Civil SISKIYOU AMBULANCE SERVICE, INC. (Not for Publication)

No. vs.

C022654 BOARD OF SUPERVISORS OF THE COUNTY OF SISKIYOU

NORTHERN SISKIYOU AMBULANCE SERVICE

The judgment is affirmed.

SCOTLAND, J.

We concur: PUGLIA, P.J.

MORRISON, J.

Civil ESTATE OF CONNIE ELIZABETH HULSE, Deceased

No. ROBIN HULSE (Not for Publication)

C024744 vs.

CEIL CHANNELL

The order admitting the will to probate and appointing respondent

the executrix is affirmed. Respondent's request for sanctions for a

frivolous appeal is affirmed.

RAYE, J.

We concur: DAVIS, Acting P.J.

CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024622 NATHANIEL PENDER

The prison term enhancement arising from defendant's 1979 conviction for fraudulent use of a credit card is stricken. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment in accordance with this opinion and to send a copy of the amended abstract to the Department of Corrections.

RAYE, J.

We concur: SIMS, Acting P.J.

NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C019549 PATRICK MERRIGAN

THE COURT:

......This modification changes the judgment.

THE COURT:

SIMS, Acting P.J. NICHOLSON, J.

#### WEDNESDAY, NOVEMBER 19, 1997

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: SIMS, Acting Presiding Justice

MORRISON, Associate Justice CALLAHAN, Associate Justice

Bailiff Palmer.
Calendar called.

Civil TERENCE SILO

No. vs.

C022895 CHW MEDICAL FOUNDATION ET AL.

C024033 Cause called. Steven W. Parrish, of Foley, Lardner, Weissburg &

Aronson argued for Defendants-Appellants. Matthew C. Jaime, of

Matheny, Poidmore, Linkert & Sears argued for Plaintiff-Respondent. Eric

Wiesel appeared on behalf of Plaintiff-Respondent but did not argue.

Cause submitted.

Civil JAMES MARRIOTT

No. vs.

C024923 INDUSTRIAL INDEMNITY

Cause called. Patrick J. Becherer, of Becherer, Beers, Murphy,

Kannett & Schweitzer argued for Defendant-Appellant. Susan H.

Handelman, of Ropers, Majeski, Kohn & Bentley argued for Intervenor-

Respondent. Cause submitted.

Civil RICHARD M. IKEDA

No. vs.

C024784 MEDICAL BOARD OF CALIFORNIA ET AL.

Cause called. Robert J. Bezemek argued for Plaintiff-Appellant.

Linda Vogel. Deputy Attorney General argued for Defendants-Respondents

Medical Board et al. Gail Onodera, Labor Relations Counsel argued for

Defendant-Respondent Dept. of Personnel Administration. Cause

submitted.

At 10:23 a.m., court recessed. At 10:25 a.m. court reconvened with the same panel except Associate Justice Nicholson in place of Associate Justice Morrison.

Civil HENRYNE A. HINES

No. vs.

C025616 ELK GROVE UNIFIED SCHOOL DISTRICT

Cause called. Henryne A. Hines argued for herself as Plaintiff-

Appellant in pro per. Ross R. Nott, of Edson & Laplante argued for

Defendant-Respondent. Cause submitted.

At 10:41 a.m., court recessed. At 2:01 p.m. court reconvened with Presiding Justice Puglia, Associate Justice Scotland and Associate Justice Morrison.

Crim. THE PEOPLE

No. vs.

C020889 RORY BRIAN CLAY ET AL.

Cause called. Elaine Forrester, court appointed counsel argued for Defendant-Appellant Michael William Destfino. John A. O'Sullivan, Deputy Attorney General argued for Plaintiff-Respondent. No argument was requested on behalf of Defendant-Appellant Rory Brian Clay. No argument was requested on behalf of Defendant-Appellant Randy James Stilley. Cause submitted.

Court recessed at 2:12 p.m. until 9:30 a.m., Friday, November 21, 1997.

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Crim. THE PEOPLE (Not for Publication)

No. vs.

C023488 JEFFREY A. LANDGREN

The judgment is affirmed.

PUGLIA, P.J.

We concur: NICHOLSON, J.

RAYE, J.

Civil BARBARA WEST (Certified for Publication)

No. vs.

C026561 THE SUPERIOR COURT OF SACRAMENTO COUNTY

PAMELA LOCKREM

Let a peremptory writ of mandate issue commanding respondent superior court to set aside its order granting child visitation to Lockrem. The alternative writ, having served its purpose, is discharged. This court's stay is dissolved. Costs are awarded to West.

NICHOLSON, J.

We concur: PUGLIA, P.J.

CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023422 WINDY LYNN CLICK ET AL.

The trial court is directed to prepare amended abstracts of judgment and send certified copies thereof to the Department of Corrections. In all other respects the judgments are affirmed.

RAYE, J.

We concur: PUGLIA, P.J.

SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023690 LARRY DEAMARAL

The order denying conduct credits is vacated and the trial court is directed to hold a new hearing in accordance with the views expressed in this opinion to determine whether defendant is entitled to conduct credits and to award such credits if it finds that he is. If credits are awarded, the court is directed to amend the abstract of judgment accordingly and to provide a certified copy thereof to the Director of Corrections. In all other respects, the judgment is affirmed.

PUGLIA, P.J.

We concur: SCOTLAND, J.

MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C019500 PAUL COMAUEX

The judgment of conviction and the special finding are affirmed. The order of probation and the order striking defendant's prior serious felony conviction are vacated. The matter is remanded for resentencing in accordance with the views expressed herein.

MORRISON, J.

We concur: PUGLIA, P.J.

SIMS, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024676 WILLIAM ANTHONY COLLINS ET AL.

The judgment is affirmed.

PUGLIA, P.J.

We concur: RAYE, J.

MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024651 EVERETT WAYNE TOLON

The judgment is affirmed.

PUGLIA, P.J.

We concur: RAYE, J.

MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024672 GREGORY LEE RAND, JR.

The sentence is vacated and the matter remanded to the trial court with directions to afford defendant the opportunity to withdraw his plea. If defendant declines to do so the trial court is directed to impose sentence according to law.

PUGLIA, P.J.

We concur: SCOTLAND, J.

MORRISON, J.

Juvenile In re ROBERT R., A Person under the Juvenile Court Law

No. THE PEOPLE (Not for Publication)

C026337 vs.

ROBERT R.

The judgment (order committing the minor to the Youth Authority)

is affirmed.

PUGLIA, P.J.

We concur: SCOTLAND, J.

MORRISON, J.

Juvenile In re KATIE T., A Person coming under the Juvenile Court Law

No. THE PEOPLE (Not for Publication)

C023131 vs.

KATIE T.

The judgment (order) is affirmed.

PUGLIA, P.J.

I concur: DAVIS, J.
I concur in the result:
BLEASE, J.

Juvenile In re ZUBAIDAH M., et al., Persons coming under the Juvenile Court Law

No. DEPARTMENT OF CORRECTIONS

C023601 vs. (Not for Publication)

ALI M. ET AL

The judgment (order) is affirmed. The Department will recover its costs on appeal.

PUGLIA, P.J.

We concur: MORRISON, J. CALLAHAN, J.

Juvenile In re EFRAIN A., A Person coming under the Juvenile Court Law

No. THE PEOPLE (Not for Publication)

C024921 vs.

EFRAIN A.

The judgment is modified to indicate the minor's maximum period of confinement is four years. The juvenile court is directed to amend its commitment accordingly and to forward a copy of the amended commitment to the Director of the Youth Authority. As modified, the judgment is affirmed.

PUGLIA, P.J.

We concur: RAYE, J.

MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C022891 STEVEN ROBERTS

The judgment is affirmed.

SIMS, Acting P.J.

We concur: RAYE, J.

CALLAHAN, J.

Juvenile In re PHILLIP W., A Person coming under the Juvenile Court Law

No. THE PEOPLE (Not for Publication)

C025934 vs.

PHILLIP W.

The order of restitution is hereby set aside. The matter is remanded to the juvenile court solely for the purpose of conducting a new restitution hearing in conformity with this opinion. In other respects, the judgment (order) of the juvenile court is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.

SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024214 EDDIE LEE GRAYSON

The judgment is affirmed.

DAVIS, J.

We concur: SIMS, Acting P.J.

SCOTLAND, J.

THURSDAY, NOVEMBER 20, 1997

Civil GREGORY DEPTUCH

No. vs.

C025209 RODWAY CHEVROLET

By the Court:

Appellant's petition for rehearing is denied.

Dated: November 20, 1997

PUGLIA, P.J.

Crim. THE PEOPLE

No. vs.

C025531 MARCUS TRAMEINE CRUMB

By the Court:

Appellant's petition for rehearing is denied.

Dated: November 20, 1997

PUGLIA, P.J.

Civil JEREMY CHRISTIAN ET AL.

No. vs.

C025614 TERMINIX INTERNATIONAL COMPANY

The judgment (order) is affirmed.

SIMS, Acting P.J.

We concur: RAYE, J.

CALLAHAN, J.

Juvenile In re PONCIANO A. ET AL., Persons coming under the Juvenile Court

No. Law

C025892 SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN

SERVICES (Not for Publication)

VS.

DAVID A.

The orders are affirmed.

SIMS, Acting P.J.

We concur: DAVIS, J.

SCOTLAND, J.

Civil BEVERLY JANE BLIXT (Not for Publication)

No. vs.

C026212 STOCKTON UNIFIED SCHOOL DISTRICT ET AL

The judgment (order of dismissal) is affirmed. The parties shall bear

their own costs on appeal.

SIMS, Acting P.J.

We concur: RAYE, J.

MORRISON, J.

Crim. THE PEOPLE (Certified for Publication)

No. vs.

C023863 JOHN DAVID LITTLE

The judgment is affirmed.

MORRISON, J.

We concur: DAVIS, Acting P.J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

No, vs.

C025304 JAMES LAWRENCE LOWERY

The judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J. CALLAHAN, J.

Civil THE PEOPLE (Not for Publication)

No. vs.

C025625 RAMIRO GUTIERREZ

The judgment is affirmed.

NICHOLSON, J.

We concur: PUGLIA, P.J. CALLAHAN, J.

Civil SANTA MARGARITA WATER DISTRICT ET AL. No. (Certified for Publication)

C024295 STATE CONTROLLER ET AL.

Let a peremptory writ of mandate issue, directing the trial court to vacate its judgment and enter a new judgment denying the Districts' petitions for writ of mandate. Appellants shall recover their costs on appeal.

SIMS, J.

We concur: PUGLIA, P.J.

NICHOLSON, J.

## FRIDAY, NOVEMBER 21, 1997

At 9:30 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: PUGLIA, Presiding Justice

DAVIS, Associate Justice

CALLAHAN, Associate Justice

Bailiff Palmer. Calendar called.

Civil RUDY V. BALMA ET AL.

No. vs.

C025983 DAVID C. STATHEM

Cause called. Sandra L. Johnson, of Moss & Enochian argued for Plaintiffs-Appellants. Kenneth M. Malovos, of Graham & James argued for Defendant-Respondent. Cause submitted.

At 10:00 a.m., court recessed. At 10:01 a.m. court reconvened with the same panel except Associate Justice Morrison in place of Presiding Justice Puglia.

Civil EWING-FOLEY SACRAMENTO INC. ET AL.

No. vs.

C024185 JONES FUTUREX, INC.

Cause called. Peter J. Stubbs argued for Plaintiffs-Appellants. Jack Mitchell appeared on behalf of Plaintiffs-Appellants but did not argue. Christopher E. Krueger, of Orrick, Herrington & Sutcliffe argued for Defendant-Respondent. Norman C. Hile appeared on behalf of Defendant-Respondent but did not argue. Cause submitted.

Civil LANK DEVELOPMENT CORPORATION ET AL.

No. vs.

C024294 FIRST NORTHERN BANK OF DIXON

Cause called. William H.G. Norman, of Bronson, Bronson & McKinnon argued for Plaintiffs-Appellants. Hartley T. Hansen, of Hansen, Boyd, Culhane & Watson argued for Defendant-Respondent. Lawrence R. Watson appeared on behalf of Defendant-Respondent but did not argue. Cause submitted.

At 11:07 a.m., court recessed. At 11:08 a.m. court reconvened with the same panel except Associate Justice Sims in place of Associate Justice Callahan.

Civil ENDANGERED HABITATS LEAGUE, INC. ET AL.

No. vs.

C023259 STATE WATER RESOURCE CONTROL BOARD ET AL.

RIVERSIDE COUNTY FLOOD ETC. ET AL.

Cause called. Michael H. Remy, of Remy, Thomas and Moose argued for Real Parties In Interest-Appellants-X-Respondents. John H. Mattox appeared on behalf of Real Parties In Interest-Appellants-X-Respondents but did not argue. Kelly L. Drumm, of the California Environmental Law Project argued for Plaintiffs-Respondents-X-Appellants with additional citations. Lawrence Silver appeared on behalf of Plaintiffs-Respondents-X-Appellants but did not argue. Cause submitted.

At 11:49 a.m., court recessed. At 11:50 a.m. court reconvened with the same panel except Associate Justice Scotland in place of Associate Justice Morrison.

Civil MARRIAGE OF

No. MITZI CHRISTOPHER

C024050 vs.

#### STEVEN DON CHRISTOPHER

Cause called. Steven Don Christopher argued for himself as Appellant in pro per. Deborah Fialkowski argued for Respondent. Cause submitted.

At 11:57 a.m., court recessed. At 2:03 p.m. court reconvened with Presiding Justice Puglia, Associate Justice Davis and Associate Justice Callahan.

Crim. THE PEOPLE

No. vs.

C024775 STEVEN THOMAS LESLIE

Cause called. Matthew B. Wilson argued for Defendant-Appellant. Rachelle A. Newcomb, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

At 2:29 p.m., court recessed. At 2:30 p.m. court reconvened with the same panel except Associate Justice Scotland in place of Associate Justice Callahan.

Crim. THE PEOPLE

No. vs.

C022379 JOHN WESLEY PARRATT

Cause called. Victor Blumenkrantz, court appointed counsel argued for Defendant-Appellant. George Hendrickson, Deputy Attorney General argued for Plaintiff-Respondent. Cause submitted.

Court recessed at 3:04 p.m. until 9:30 a.m., Monday, November 24, 1997.

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Crim. THE PEOPLE

No. vs.

C026001 JAY R. THOMPSON

By the Court:

Respondent's motion to dismiss the appeal is granted, and the appeal filed February 24, 1997, is dismissed. (People v. Kelley (1994) 22 Cal. App.4th 533.)

Dated: November 21, 1997

PUGLIA, P.J.

Civil CAPITOL HISPANIC BROADCASTERS INC. ET AL

No. vs.

C024906 PONCE-NICASIO BROADCASTING INC. ET AL.

By the Court:

Appellants' motion to augment record/request for judicial notice is denied. The clerk of this court is directed to return the material attached to the request to counsel for appellants.

Appellants' petition for rehearing is denied.

Dated: November 21, 1997

RAYE, Acting P.J.

Civil DANA S. MORALES

No. vs.

C026453 WILLIAM T. RICKEY

By the Court:

Pursuant to the written stipulation of counsel, the appeal filed on May 1, 1997, is dismissed. It is further ordered pursuant to said stipulation that the remittitur issue forthwith.

Dated: November 21, 1997

PUGLIA, P.J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025589 DANILO ONTONIEL ROSALES

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.

SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025450 ARTHUR STEVEN SPOHN

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.

SCOTLAND, J.

Civil GERTRUDE E. POLEN (Not for Publication)

No. vs.

C024652 DAVID L. THOMAS ET AL.

C025515 The judgment is affirmed. Polen shall recover costs on appeal.

NICHOLSON, J.

We concur: PUGLIA, P.J.

RAYE, J.

Civil KULDEEP SIDHU (Not for Publication)

No. vs.

C024148 MEDICAL BOARD OF CALIFORNIA

The judgment denying the peremptory writ of mandate is affirmed.

BLEASE, Acting P.J.

We concur: DAVIS, J.

RAYE, J.

Civil JANICE FOSSATI FAHDEN ET AL. (Not for Publication)

No. vs.

C025479 KENNETH R. WOOD

The judgment is reversed. The cause is remanded to the trial court

for further proceedings consistent with the views expressed herein.

Defendant shall recover costs on appeal.

CALLAHAN, J.

We concur: PUGLIA, P.J.

NICHOLSON, J.

Civil COUNTY OF AMADOR ET AL. (Not for Publication)

No. vs.

C025577 DEPARTMENT OF CORRECTIONS ET AL.

The judgment is reversed with directions to enter a judgment

denying the petition. CDC shall recover the costs of this appeal.

BLEASE, Acting P.J.

We concur: NICHOLSON, J.

MORRISON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025593 FRANK ANTHONY OSEGUERA

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.

SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023972 JAMES MATHEW VALDEZ

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: SIMS, J.

SCOTLAND, J.

Civil CITY OF REDDING (Not for Publication)

No. vs.

C021102 MOBIL OIL COMPANY ET AL.

The judgment entered on April 10, 1995, in favor of all defendants is

affirmed. Defendants shall recover their costs on appeal.

SIMS, J.

We concur: PUGLIA, P.J.

SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025267 DARON DEWAYNE FULTON

BLEASE, Acting P.J.

We concur: SCOTLAND, J.

NICHOLSON, J.

Civil RICHARD M. IKEDA (Not for Publication)

No. vs.

C024784 MEDICAL BOARD OF CALIFORNIA ET AL.

The judgment (order) is affirmed. Respondents shall recover their

costs on appeal.

SIMS, Acting P.J.

We concur: MORRISON, J. CALLAHAN, J.

Civil WILLIAM FLUHARTY (Certified for Publication)

No. vs.

C021772 JACK FLUHARTY

The judgment is affirmed.

PUGLIA, P.J.

I concur: MORRISON, J.

I dissent, I would reverse the judgment.

RAYE, J.

## MONDAY, NOVEMBER 24, 1997

At 9:29 a.m., the court met in the Library & Courts Building for a continuation of its regular appeals calendar.

PRESENT: SCOTLAND, Acting Presiding Justice

MORRISON, Associate Justice SPARKS, Associate Justice

Bailiff Palmer. Calendar called.

## MONDAY, NOVEMBER 24, 1997 CONTINUED

Civil PETER F. SCHABARUM

No. vs.

C020336 CALIFORNIA LEGISLATURE ET AL.

Cause called. Anthony T. Caso argued for Plaintiff-Appellant-X-Respondent Pacific Legal Foundation with additional citations. Joseph Remcho, of Remcho, Johansen & Purcell argued for Defendants-Respondents-X-Appellants. Steven L. Mayer, of Howard, Rice, Nemerovski, Canady, Falk & Rabkin argued for Defendant-Respondent. James C. Harrison appeared on behalf of Defendant-Respondent but did not argue. Bion M. Gregory appeared on behalf of Defendant-Respondent but

did not argue. Cause submitted.

Court adjourned at 10:21 a.m. until 9:30 a.m., Monday, December 15, 1997.

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Civil SUNRISE RETIREMENT VILLA ET AL.

No. vs.

C024496 PLACER COUNTY ASSESSOR

By the Court:

Appellant's petition for rehearing is denied.

Dated: November 24, 1997

RAYE, Acting P.J.

Crim. MERCY HEALTH CARE NORTH

No. vs.

C027112 S. KIMBERLY BELSHE, AS DIRECTOR ETC.

By the Court:

Pursuant to written request of appellant, the appeal filed July 17, 1997, is dismissed. It is further ordered that the remittitur issue forthwith.

(See Cal. Rules of Court, rule 19 (b).) Dated: November 24, 1997

PUGLIA, P.J.

#### MONDAY, NOVEMBER 24, 1997 CONTINUED

Civil HAROLD SLEAR ET AL. (Not for Publication)

No. vs.

C024995 CHANNEL LUMBER COMPANY

The judgment ("Order After Hearing") of the Placer County Superior Court filed in this matter on October 9, 1996, is reversed and the matter is remanded with directions for the trial court to enter a new award of attorney fees consistent with this opinion. In all other respects, the judgment (order) is affirmed. The parties will pay their own costs of appeal.

DAVIS, J.

We concur: SIMS, Acting P.J.

SCOTLAND, J.

Civil JAMES M. DE SPAIN ET AL. (Not for Publication)

No. vs.

C024686 TODD L. RATLEY ET AL.

The judgment is reversed. Appellants are awarded costs of appeal.

DAVIS, J.

We concur: RAYE, J.

MORRISON, J.

Civil CALIFORNIA TEACHERS' ASSOCIATION ET AL.

No. vs. (Certified for Publication)

C019678 STATE OF CALIFORNIA ET AL.

The judgment is affirmed.

SPARKS, J.\*

I concur: SIMS, J.

I dissent:

I would reverse the judgment and instruct the trial court to enter judgment for the defendant.

PUGLIA, P.J.

\*Retired Justice of the Court of Appeal, Third District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

## TUESDAY, NOVEMBER 24, 1997

Civil PATTI DONLON ET AL.

No. vs.

C021029 SMITH BARNEY-SHEARSON, INC.

By the Court:

Appellants' petition for rehearing is denied.

Dated: November 25, 1997

SCOTLAND, Acting P.J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025816 LARRY A. MOBLEY

The judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C016314 KENNETH DERRELL WILLIAMS

THE COURT:

The modifications do not affect the judgment. The petition for

rehearing is denied. FOR THE COURT:

PUGLIA, P.J. NICHOLSON, J. CALLAHAN, J.

Crim. THE PEOPLE (Certified For Publication)

No. vs.

C024461 GARY KLOCKMAN

The judgmen is modified to vacate the eight-month consecutive term imposed for defendant's El Dorado County section 261.5 conviction. As modified, the judgment is affirmed. The trial court shall prepare a corrected abstract of judgment and send a certified copy of the same to the

Department of Corrections.

RAYE, J.

We concur: SIMS, Acting P.J.

NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024775 STEVEN THOMAS LESLIE

The judgment is affirmed.

CALLAHAN, J.

We concur: PUGLIA, P.J.

DAVIS, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024833 ROBERT JOE CRAWFORD

The judgment is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.

NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024763 JOSEPH M. BARLEW

The judgment is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.

NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024159 ASALI MARIE RICHARDSON

The judgment is modified to vacate one of the five-year terms imposed for two section 667, subdivision (a) enhancements making defendant's total sentence one of 30 years to life in state prison. As modified, the judgment is affirmed. The trial court shall send a corrected abstract of judgment to the Department of Corrections.

SIMS, J.

We concur: BLEASE, Acting P.J.

DAVIS, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024483 FERNANDO GARCIA AVILA, JUAN PEREZ CASTRO

C024759 The judgments are affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.

NICHOLSON, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024329 JENNIE LEE RAINSBARGER

The judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024300 JIMMY L. ANDREWS

The judgment is affirmed.

RAYE, J.

We concur: SIMS, Acting P.J.

NICHOLSON, J.

Civil BILLY GOFF ET AL. (Certified for Publication)

No. vs.

C022434 COMMISSION ON STATE MANDATES

COUNTY OF SACRAMENTO ET AL.

The judgment is reversed and the cause remanded to the trial court with directions to reconsider the evidence under the independent standard of review and thereafter proceed according to law. Plaintiffs are awarded their costs on appeal.

SPARKS, J. \*

I concur: SIMS, J.

I concur in the judgment and in Part I of the Discussion. I dissent from the cursory analysis in Part II of the Discussion concerning the standards which the trial court must follow on remand.

BLEASE, Acting P.J.

\*Retired Associate Justice of the Court of Appeal, Third District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024416 CIPRIANO SALDANA, SR.,

The judgment is affirmed.

SIMS, Acting P.J.

We concur: NICHOLSON, J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024828 KEVIN LAMAR BROWN

The judgment is affirmed.

SIMS, Acting P.J.

We concur: DAVIS, J.

SCOTLAND, J.

Civil RUDY V. BALMA, ET AL. (Not for Publication)

No. vs.

C025983 DAVID C. STATHEM

The judgment appealed from is affirmed. Stathem's request for

sanctions is denied.

CALLAHAN, J.

We concur: PUGLIA, P.J.

DAVIS, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024528 ZACHARY THADDEUS MCPEAK

The convictions on counts one, two and three are affirmed. The sentence is vacated and the matter is remanded to the trial court to recalculate the term of imprisonment, to reduce the restitution fine, and to vacate the true findings on the appropriate eight prior convictions (667, subd. (a)) in accordance with this opinion. The other seven true findings on the prior convictions (667, subd. (a)) are affirmed as are the true findings on the strike priors and on the prior prison term allegations. In all other respects, the judgment is affirmed.

CALLAHAN, J.

I concur: DAVIS, Acting P.J.

I concur except as to Part I, in which I concur in the result.

SCOTLAND, J.

Civil MALCOLM LEISER (Not for Publication)

No. vs.

C025194 CALIRELEE BULKEY ET AL.

The judgment is affirmed. Defendant's motion for sanctions is

denied. Defendants shall recover their costs on appeal.

RAYE, J.

We concur: PUGLIA, P.J.

MORRISON, J.

Civil JAMES MARRIOTT (Not for Publication)

No. vs.

C024923 HEIL COMPANY

**INDUSTRIAL INDEMNITY** 

The judgment is erversed. Heil shall recover its costs on appeal.

MORRISON, J.

We concur: SIMS, Acting P.J.

CALLAHAN, J.

WEDNESDAY, NOVEMBER 26, 1997

Civil MARRIAGE OF KATHLEEN AND WILLIAM HEGG

No. KATHLEEN F. HEGG

C024336 vs.

WILLIAM G. HEGG

By the Court:

Appellant's petition for rehearing is denied.

Dated: November 26, 1997

DAVIS, Acting P.J.

Crim. THE PEOPLE (Not for Publication)

NO. vs.

C023828 JOHN PAUL SOBASZKIEWICZ

THE COURT:

This modification does not effect a change in the judgment.

The petition for rehearing is denied.

FOR THE COURT:

DAVIS, Acting P.J. NICHOLSON, J.

RAYE, J.

Crim. THE PEOPLE

No. vs.

C019221 JAMIE LOMELI GOMEZ

THE COURT:

This modification does not affect the judgment. The petition for

rehearing is denied. FOR THE COURT: PUGLIA, P.J.

RAYE, J.

Crim. THE PEOPLE (Not for Publication)

NICHOLSON, J.

No. vs.

C026369 MARCUS DIETER FELDER

The judgment is affirmed.

RAYE, J.

We concur: PUGLIA, P.J. SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

NO. vs.

C027091 NELLIE JEAN HUMPHREY

The judgment is affirmed.

RAYE, J.

We concur: PUGLIA, P.J.

SCOTLAND, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C025233 MICHAEL LEE MOSLEY

The judgment is affirmed.

MORRISON, J.

We concur: PUGLIA, P.J,.

DAVIS, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C023916 LEONARD JOHN SHADLE

The judgment is affirmed.

CALLAHAN, J.

We concur: DAVIS, J.

SCOTLAND, J.

Civil ROGER LAPANT, JR. ET UX (Not for Publication)

No. vs.

C025444 ROBERT BARROW ET UX

The judgment is affirmed.

MORRISON, J.

We concur: DAVIS, Acting P.J.

RAYE, J.

Civil CARLIN HOFMAN ET AL. (Not for Publication)

No. vs

C025339 FIVE WAY FARMING ET AL.

The judgment is affirmed.

MORRISON, J.

We concur: SIMS, Acting P.J.

RAYE, J.

Civil EWING-FOLEY SACRAMENTO, INC. ET AL.

No. vs. (Not for Publication)

C024185 JONES FUTUREX, INC.

The judgment is affirmed.

MORRISON, J.

We concur: DAVIS, Acting P.J.

CALLAHAN, J.

Civil CLAUDETTE MOSLEY (Not for Publication)

No. vs.

C025033 SACRAMENTO MEDICAL FOUNDATION

The judgment is affirmed.

MORRISON, J.

We concur: NICHOLSON, Acting P.J.

CALLAHAN, J.

Crim. THE PEOPLE (Not for Publication)

No. vs.

C024368 AARON DEVARY MALLOY

The judgment is affirmed.

CALLAHAN, J.

We concur: SIMS, Acting P.J.

RAYE, J.

Crim. THE PEOPLE (Certified for Publication)

No. vs.

C024299 ANDRE LAMONT MCCLAIN

The conviction is affirmed, the sentence is vacated and the matter is

remanded for resentencing consistent with this opinion.

MORRISON, J.

We concur: BLEASE, Acting P.J.

SIMS, J.

Civil ANDREW E. EFSTRATIS (Certified for Publication)

No. vs.

C024294 FIRST NORTHERN BANK OF DIXON

The order of the trial court is vacated and the matter remanded with

directions to enter a new order granting the motion for a preliminary

injunction. Plaintiff Efstratis shall recover costs of appeal.

DAVIS, Acting P.J.

We concur: MORRISON, J.

CALLAHAN, J.

Civil COUNTY OF SAN JOAQUIN (Not for Publication)

No. vs

C025442 KIMBERLY BELSHE ETC.

The judgment is affirmed.

DAVIS, J.

We concur: PUGLIA, P.J.

MORRISON, J.